

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Michael Westbrook,
10 Plaintiff,

11 v.

12 Caliber Home Loan Incorporated, et al.,
13 Defendants.
14

No. CV-23-00624-PHX-JAT

ORDER

15 “Inquiring whether the court has jurisdiction is a federal judge’s first duty in every
16 case.” *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 693 (7th
17 Cir. 2003). This case was removed to federal court based on diversity jurisdiction. *See* 28
18 U.S.C. § 1332. As to the Defendant or Defendants that are trusts (it is unclear who Plaintiff
19 named as a Defendant per the Notice of Removal at footnote 1), the notice of removal
20 states:

21 The 2020-1R Trust is a New York common law trust, and the 2018 Trust is
22 a New York common law trust. “A trust has the citizenship of its trustee.”
23 *Johnson v. Columbia Props. Anchorage LP*, 437 F.3d 894, 899 (9th Cir.
24 2006). US Bank is the Trustee of the 2020-1R Trust. National banking
25 associations are “deemed citizens of the States in which they are respectively
26 located.” 28 U.S.C. § 1348. For purposes of diversity jurisdiction, a national
27 bank is “located” only in the state where it has its designated main office.
28 *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306–07 (2006). US Bank is a
national banking association whose Articles of Association designate the
location of its main office as Cincinnati, Ohio. US Bank and the 2020-1R
Trust are therefore citizens of Ohio.

(Doc. 1 at 4).

Defendants correctly represent the state of the law in the Ninth Circuit in 2006.

1 However, in 2016, the United States Supreme Court decided *Americold Realty Tr. v.*
2 *Conagra Foods, Inc.*, 577 U.S. 378 (2016), which generally holds that a non-traditional
3 trust (under the laws of the state in which it was created), such as a real estate investment
4 trust, takes on the citizenship of all of its beneficiaries/shareholders. The Supreme Court
5 further suggested that the case the Ninth Circuit Court of Appeals relied on in *Johnson*,
6 namely *Navarro Savings Assn. v. Lee*, 446 U.S. 458 (1980), is limited to human trustees
7 suing in their own name. *Id.* at 382-83. (“...*Navarro* reaffirmed a separate rule that when
8 a trustee files a lawsuit in *her* name, her jurisdictional citizenship is the State to which she
9 belongs—as is true of any natural person. [citation omitted]. This rule coexists with our
10 discussion above that when an artificial entity is sued in its name, it takes the citizenship
11 of each of its members.”).

12 Thus, this Court’s preliminary conclusion is that the Colt 2020-1R Mortgage Loan
13 Trust and the Colt 2018-2 Mortgage Loan Trust are the same type of non-traditional trusts
14 as the trust in *Americold*. Therefore, for purposes of diversity jurisdiction, each trust would
15 take on the citizenship of every beneficiary/investor in that trust and not the citizenship of
16 the non-human Trustee. Before the Court remands, the Court will permit Defendants to
17 supplement the notice of removal. In the supplement, Defendants must either explain why
18 *Americold* does not govern this case (which again the Court has already concluded
19 *Americold* likely controls) or identify the citizenship of every
20 beneficiary/shareholder/investor in the Colt 2020-1R Mortgage Loan Trust and the Colt
21 2018-2 Mortgage Loan Trust.

22 Based on the foregoing,

23 ///

24 ///

25 ///

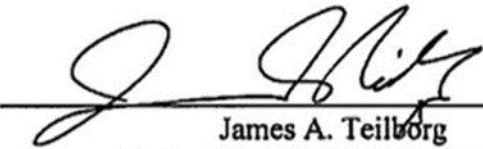
26 ///

27 ///

28 ///

1 **IT IS ORDERED** that Defendants must supplement the notice of removal within 7
2 days of this Order and cure the jurisdictional issues identified above, or this case will be
3 remanded to state court.

4 Dated this 12th day of May, 2023.

5
6
7
8 
9 James A. Teilborg
10 Senior United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28